HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 274 of 2006

1. Vivek Mistri S/o Khirat Mistri
2. Parimal Mistri S/o Khirat Mistri
3. Maher Mistri S/o Khirat Mistri
4. Bhavanand S/o Khirat Mistri
5. Banti S/o Vivek
6. Pavitra Mistri S/o Parimal
   All R/o village Gram Pakadia
   P.S. Khatima, U.S. Naga .....Applicants

Versus

1. State of Uttaranchal
2. Judicial Masistrate, Khatima
3. Asim Sarkar
   S/o Adhir Sarkar
   R/o village Gram Pakadia
   P.S. Khatima, U.S. Nagar ...Respondents

Shri Tumul Nailwal learned counsel for the applicants.
Shri Nandan Arya, learned G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 04.04.2006 passed by the Judicial Magistrate, Khatima in criminal case No.1199/2005 only so far the offence under section 436/149 IPC is concerned. It has been further prayed that the Sessions Court may be directed to enlarge the applicants on bail on the date of their appearance under section 436/149 IPC.

2. Brief facts of the case are that the applicants have been enlarged on bail under sections 147, 323, 324 IPC. Thereafter, the I.O. has submitted the chargesheet under the aforesaid sections. Though, the I.O. has not submitted the chargesheet under section 436/149 IPC, but the learned Magistrate took cognizance against the

Applicants under section 436/419 IPC including sections in which the I.O. has submitted the chargesheet. Thereafter, the Magistrate directed the applicants to appear before the court so that the case may be committed to court of sessions. Feeling aggrieved by the order passed by the Magistrate, the present petition has been filed.

3. Learned counsel for the applicants contended that there is no prima facie case against the applicants under section 436/149 IPC. It was further contended that the learned Magistrate has erred in holding that there is a prima facie case under section 436149 in addition to the other charges. It was further contended that the applicants were on bail under sections 147, 323, 324 IPC and as such they may be granted bail in the subsequent sections without filing fresh bail application.

4. Perusal of the record reveals that Gopal S/o Adhir Sarkar has stated that the accused had set fire to the hutment of the complainant. However, the other witnesses have not corroborated this version. The I.O. omitted to submit the chargesheet under section 436/149 IPC and the magistrate has taken the charges on the basis of the statement of the above witness. Considering the evidence, I feel that the congnizance order requires no interference. It is made clear that the accused applicants can raise all the pleas before the Sessions Judge while framing the charge that the case is not made out and the learned Session Judge after appreciation of evidence on record will pass an appropriate order as to whether the chargesheet under section 436/149 IPC is made out or not.

5. Learned counsel for the applicants has relied upon a decision of Allahabad High Court in Ugrasen Singh Vs. State of U.P. reported in 1993(30) ACC p/531. Learned counsel for the applicants has also relied upon the decision of this Court in Jamil Vs. State of Uttaranchal reported in 2005(3) U.C. p/1698. In both the decision, it has been held that if a person is once granted bail in the minor offences, he need not to file fresh bail application for grant of bail in the subsequent sections and he will remain on bail on earlier order.the

6. In view of the discussion, the learned Magistrate is directed to permit the applicants to furnish fresh surety bond without requiring them to file fresh bail application. So far as the pleas raised by the learned counsel for the applicants regarding whether there is prima facie case under section 436/149 IPC is made out are concerned, the applicants will raise these pleas before the court below at the stage of framing of charge.

7. The petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 01.05.2006

LSR